Congress
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SENATE

Document
No. 406

HENRY A. V. POST
V.
THE UNITED STATES

COMMUNICATION FROM
THE ASSISTANT CLERK COURT OF CLAIMS

TRANSMITTING

A CERTIFIED COPY OF THE FINDINGS OF FACT AND CONCLUSION, OPINION OF THE COURT AND CONCURRING OPINION, BY HOWRY, J., FILED BY THE COURT IN THE CAUSE OF A. V. POST, SURVIVING AND LIQUIDATING PARTNER OF H. A. V. POST, ARCHER N. MARTIN, CLARENCE H. CLARK, FREDERICK S. KIMBALL, FREDERICK J. KIMBALL, AND SABIN W. COLTON, JR., WHO COMPOSED THE LATE FIRM OF CLARK, POST & MARTIN, AGAINST THE UNITED STATES

FEBRUARY 9, 1914.—Referred to the Committee on Claims and ordered to be printed

WASHINGTON
1914


UNITED STATES OF AMERICA
GOVERNMENT PRINTING OFFICE

HENRY A. V. POST v. THE UNITED STATES.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 7, 1914.

n. THOMAS R. MARSHALL,
President of the Senate.

SIR: Pursuant to the order of the court, I transmit herewith a tified copy of the findings of fact and conclusion, opinion of the irt and concurring opinion by Howry, J., filed by the court in the resaid cause, which case was referred to this court by resolution the United States Senate under the act of March 3, 1911, known the judicial code.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

rt of Claims of the United States. Congressional, No. 15598. Decided December 1, 1913. Henry A. Post, surviving and liquidating partner of H. A. V. Post, Archer N. Martin, Clarence H. Clark, Frederick S. Kimball, Frederick J. Kimball, and Sabin W. Colton, jr., who composed the late firm of Clark, st & Martin *v.* The United States.]

STATEMENT OF CASE.

he following bill was referred to the court by resolution of the United States Senate he 22d day of February, 1912, under section 151 of the Judicial Code, approved ch 3, 1911:

"[Sixty-second Congress, second session.]

BILL For the relief of Henry A. V. Post, individually and as liquidating partner of the firm of Clark, Post and Martin.

Be it enacted by the Senate and House of Representatives of the United States of America Congress assembled, That the Secretary of the Treasury be, and he is hereby, norized and directed to pay, out of any money in the Treasury not otherwise appriated, to Henry A. V. Post, individually and as liquidating partner of H. A. V. Pt, Archer N. Martin, Clarence H. Clark, and others, who composed the late firm of Clark, Post and Martin, the sum of fifty thousand three hundred and eighty-e dollars and forty-six cents, for refund of import duties paid by them in excess he duties imposed by law on steel blooms imported by them during the years teen hundred and seventy-nine to eighteen hundred and eighty-two, both years usive."

he claimant appeared and filed his petition in this court on the 5th day of March, 2, in which he makes the following allegations:

hat he is a citizen of the United States, residing in the borough of Manhattan, of New York, in the county of New York and State of New York.

hat he is the surviving and liquidating partner of H. A. V. Post, Archer N. Martin Clarence H. Clark, Frederick S. Kimball, Frederick J. Kimball, and Savin W. Cton, jr., who composed the late firm of Clark, Post & Martin, who, as such partners, ding the period between July 1, 1879, and October 31, 1881, imported and entered at he port of New York goods known as steel blooms of the value of $472,567 and at tl port of Philadelphia of the value of $23,567.

hat a part of such importations were made as agents for the Springfield Iron Co., a pt on joint account with the Springfield Iron Co., and a part for said firm individual.

That the lawful duty on the said steel blooms was 30 per cent ad valorem, th being the duty fixed by section 2504 of the Revised Statutes of the United State page 466, edition of 1878, for steel in any form not otherwise provided for, but t officers of the United States demanded and exacted from the said firm of Clark, Post Martin a duty amounting to 45 per cent ad valorem, and thus received from the sa firm $74,420.10 of import duties in excess of the legal duties on said steel blooms so aforesaid imported by the said firm.

That a bill of particulars marked "Exhibit A" sets forth said importations and the details concerning same and is attached hereto.

That at the time of paying the said 45 per cent duty your petitioner's said fir together with other importers of steel blooms, were satisfied that an illegal rate duty was being exacted and objected to paying the same, but were compelled make such payment by the Treasury Department, and they did not protest becau they feared that if they did the rate of duty would be increased. At that time m chandise classified as "steel in ingots, bars," etc., "valued at 7 cents per pound less" was dutiable under such section at $2\frac{1}{4}$ cents per pound, or about 200 per ce ad valorem. The American manufacturers of steel claimed that such was the c rect rate for steel blooms, and the importers, including your petitioner's said fir were repeatedly given to understand by the Treasury Department that if prot against the 45 per cent rate was made the merchandise would be reclassified as "st in ingots" and a duty of $2\frac{1}{4}$ cents per pound imposed. The Treasury Departme then had power to increase the duty by such reclassification, but not to so reduce without recommendation of the Attorney General or judicial authority. (Act of M 3, 1875, ch. 136, 18 Stat. L., p. 469.) At this time steel blooms in large quantit had been ordered and were arriving regularly, and the imposition of such increase duty would have brought financial disaster. No formal protest was made by yc petitioner's said firm only and solely because they believed that in the event t such protest was made a duty of $2\frac{1}{4}$ cents per pound would be enforced by the Treasu Department.

That after the payment of the said duty by your petitioner's said firm as aforesa it was held in the United States Circuit Court in the Southern District of New Yo in a suit brought by *Downing* v. *Robertson, Collector*, upon a verdict of the jury und instructions of the court, that this merchandise should have been classified as "st in a form not otherwise provided for," and dutiable under said section at 30 per ce ad valorem. An appeal from such decision was dismissed by the Supreme Court the United States, and the Treasury Department, by letter under date of February 1885, directed that there should be no further litigation on the subject. That the sa importations described in said Exhibit A were of the same character and kind those involved in the said case of Downing.

That thereafter your petitioners, together with other importers of steel bloor presented a bill to Congress for their relief, which bill conferred jurisdiction upon t Court of Claims, notwithstanding any statutory bar of limitation and notwithstandi the requirements of the statutes as to payment under protest, appeal to the Secreta of the Treasury, and notice to bring suit ordinarily in such cases as prescribed title 34 (Collection of Duties), chapters 6, 7, and 8, Revised Statutes, to hear, t determine, and render judgment as in an original suit, with the right of appeal as other cases, the claims of the said importers. This bill was first presented in 18 and was continually pressed upon the attention of Congress until Congress fina passed such bill. (Act Jan. 9, 1903, 32 Stat. L., 764.)

That from the report of the Senate committee which reported such bill (S. Re 391, 57th Cong., 1st sess.) it appears that the said committee found that the claima were deterred, except in one case, from complying with the provision of the statu in respect to protest through fear of an increase of rate of duty from 45 per cent valorem to $2\frac{1}{4}$ cents per pound, and that in this one case, that of H. E. Collins & C the increase was actually made after the payment of the former duty, and that su report and action of Congress was based upon certain sworn statements then bef Congress. Your petitioner's said firm was named in this act, but by an error or as agents for the Springfield Iron Co. This matter on behalf of your petitione said firm had been left entirely in the charge of Mr. Ridgely, of the Springfield Iron C with whom your petitioner's said firm had been in close business relations, and it v the understanding of your petitioner, when the bill passed, that the said firm h been provided for therein individually as well as agents for the Springfield Iron

That the importations on the individual account were precisely like those ma as agents and upon the joint account.

That thereafter, pursuant to the provision of said act, your petitioner, as survivi partner as aforesaid, filed a claim in the Court of Claims of the United States, N 23,355, asking for a refund of the said excess of 15 per cent ad valorem, but the co

owed this claim only to the extent of the importation made for the account of e Springfield Iron Co. and upon the joint account with the said Springfield Iron ., upon objection made by the Attorney General, that the act did not confer isdiction to allow a claim of your petitioner's said firm on its individual account. ur petitioner did not know until this objection was made by the Attorney General t the individual claim of his said firm had not been provided for, and alleges that ngress intended by the act of 1903 to provide for the payment of the claim of his n individually. The findings on his said claim were filed in this court on April 1906.

That as soon as your petitioner learned that he could not prove his individual claim the liquidating partner as aforesaid under the said act, he at once caused a new bill cover this defect containing the same provision as the said act of January, 1903, e presented to the Fifty-ninth Congress at its first session, in March, 1906 (S. 5151). is bill was reported favorably by the Senate committee (Rept. 2538), wherein it s found that Congress had omitted to provide for said claim by an inadvertence; l was duly passed by the Senate on April 12, 1906. A similar bill was introduced the House and referred to the Committee on Claims, which made no report. The l was reintroduced before the Sixtieth Congress (S. 763, H. R. 12575) and referred the Committee on Claims. A hearing was had before the subcommittee of the use committee, who considered the bill favorably, but did not report. Thereer the bill was introduced in the Sixty-first Congress (H. R. 16143). A hearing s had before the subcommittee of the House committee on February 16, 1910, which s reported and ordered printed. No report was made by the House committee. ereafter the bill was introduced before the Sixty-second Congress at its second sesn (S. 4226, H. R. 17323). The bill came regularly before the Senate Committee Claims on February 13, 1912, and was, on motion, referred to this court for findings, pursuance of the provisions of section 151 of the Judicial Code. Thereupon the l was reintroduced in form to be referred and was referred, with other claims, to s court for findings on February 22, 1912.

That no part of the said excess duties has been paid by the United States, or anyone e, except so much as was recovered under said act of January 9, 1903, by judgment his court, as aforesaid, in the amount of $24,060.75, covering the entries set forth the schedule hereto annexed marked "Exhibit B," of which amount $18,045.57 s recovered on the said agency account by the Springfield Iron Co. and $6,015.18 the said joint account; and that the amount of duties paid as aforesaid in excess he duty warranted by law, which have not been recovered from the United States vernment as aforesaid, amounts to $50,359.35.

That the steel blooms so imported as aforesaid for the individual account of the said n of Clark, Post & Martin were shipped directly to the rolling mills and were there ed into steel rails for the account of the said firm, which were sold at current market ces. Because of this it is impossible to say whether or not a profit or a loss was de upon any particular importation, but as the result of all the said importations de by your petitioner's said firm during the said years the said firm suffered a loss a sum greater than the said excess of lawful duty.

That on the 31st day of October, in the year 1881, the firm of copartnership of Clark, t & Martin was dissolved, and that it was then and there agreed that your petitioner uld become and be the liquidating partner of said copartnership, and should idate all its affairs and accounts. Thereafter the said Archer N. Martin died ing the year 1895; Clarence H. Clark died on March 13, 1906; Frederick S. Kimball d on February 25, 1894; and Frederick J. Kimball died on July 27, 1903, and upon dissolution of said copartnership your petitioner became and now is vested with the rights, property, and assets of said copartnership, and the right to receive and ect the same, including the claim hereinbefore set forth.

The case was brought to a hearing on its merits on the 16th day of April, 1913. ssrs. Cleveland, McLean & Hayward appeared for the claimant, and the Attorney eral, by J. Harwood Graves, Esq., his assistant and under his direction, appeared the defense and protection of the interests of the United States.

The court, upon the evidence adduced and after considering the briefs and arguents of counsel on both sides, makes the following

FINDINGS OF FACT.

The claimant is a citizen of the United States and a resident of Babylon, N. Y.

I. From and including the 1st day of July, in the year 1879, to the 31st day of ober, in the year 1881, the claimant and Archer N. Martin, together with the n of E. W. Clark & Co. (which latter firm was composed of Clarence H. Clark, derick S. Kimball, Frederick J. Kimball, and Sabin W. Colton, jr., as partners)

were partners doing business together at 30 Pine Street, in the city of New Y under the firm name and style of Clark, Post & Martin.

III. Between July 1, 1879, and October, 31, 1881, the said firm of Clark, Pos Martin imported and entered at the port of New York goods known as steel bloo of the value of four hundred and seventy-two thousand five hundred and sixty-se ($472,567) dollars, and at the port of Philadelphia goods known as steel blooms the value of twenty-three thousand five hundred and sixty-seven ($23,567) doll making a total value of four hundred and ninety-six thousand one hundred and thi four ($496,134) dollars.

IV. Of such importations, steel blooms of the value of one hundred and si thousand four hundred and five ($160,405) dollars were imported on joint acco with the Springfield Iron Co., and the balance, or steel blooms of the value of th hundred and thirty-five thousand seven hundred and twenty-nine ($335,729) dol were imported for the individual account of Clark, Post & Martin.

V. The physical constitution of steel is a crystalline condition. In the proces manufacture molten steel is cast into a mold and forms an ingot. The ingot is t reheated and rolled or hammered until it assumes the desired shape, and is ther condensed and improved in quality, the crystals being broken up or made sma or elongated, while at the same time oxidization takes place. It is cut into speci lengths so as to secure as nearly as possible the requisite weight of material. In new form the steel becomes known as a bloom, a well-known article of trade commerce, and is developed by further rolling or hammering into various for large or small, according to the purpose for which it is intended. Should the bl be elongated by further rolling or hammering, it becomes known to the trade as steel, though no chemical change has taken place in its constitution, it being me reduced to another shape. Blooms intended to be converted into rails for railr come in form about 4 feet long and about 6 or 7 inches square at the ends and weig about 600 pounds. In their development definite dimensions and weights are sou to be attained. The further process of converting the bloom into a rail is to re it and do nothing more than roll it until it is sufficiently reduced in cross section to the form intended, and lengthened to the desired number of feet, when the are trimmed off.

VI. All the said importations were commercially known as steel blooms or bl of steel, and were rough masses of steel approximately about 7 inches high, 7 in wide, and 6 or 7 feet in length.

They are suitable only for use as raw material (steel) from which articles manu tured of steel, or of which steel is the component part, can be made. As such material they are suitable for the manufacture of a variety of articles, such as rails, steel beams, steel axles, and so forth. As such raw material they are also able to be rolled or hammered down into other forms of the raw material, steel, as billets, bars, and so forth, which are suitable to be manufactured into a va of smaller articles of manufacture, composed of steel, or of which steel forms a ponent part.

Steel is imported in a variety of forms, such as ingots, blooms, billets, bars, sheets, and so forth.

Each form of the raw material, steel, is adapted to be used in the manufacture special class of articles. For example, steel ingots are adapted for manufacture guns, armor plate, and sometimes rails. Steel blooms are adapted to be used in manufacture of rails, beams, axles, etc. Steel billets are adapted to be used in rails, beams, axles, etc. Steel billets are adapted to be used in the manufactu lighter weights of rails, etc. Steel bars are to be used in the manufacture of tools, etc. Steel sheets are adapted to be used in the manufacture of shovels goods of that character, and in making the ingots, blooms, billets, bars, sheets, they are usually made in such sizes as to the best adaptable for sale to the sp trades which use them as raw material.

VII. Prior to the time of these importations the railroads of this country had laid with iron rails, and because of the heavy traffic which had begun and the sequent wear and tear it had been decided by the leading railroads to re-lay tracks with steel rails. This caused a large demand for steel and caused the importations. The steel industry was then controlled by the Bessemer inte and these importations brought competition against them.

VIII. In the year 1879 steel blooms were a new article of commerce, and on Oc 22, 1879, a conference was had at the Treasury Department in Washington, at w were present representatives of the said importers and representatives of the American manufacturers or Bessemer interests. The importers claimed that th rect rate of duty was 30 per cent ad valorem, while the Bessemer interests cla that the true rate was $2\frac{1}{4}$ cents per pound, or about 200 per cent ad valorem.

X. During the years 1879 to 1881, inclusive, merchandise classified as "steel in ots, bars," etc., "valued at seven cents per pound or less" was dutiable at $2\frac{1}{4}$ ts per pound, or about 200 per cent ad valorem.

. During the years 1879 to 1881, both inclusive, the Treasury Department had er to increase the rate of duty by a reclassification.

I. The lawful duty on the said steel blooms was thirty per cent ad valorem, that ng the duty fixed by section 2504 of the Revised Statutes of the United States, e 466, edition of 1878, for "steel in any form not otherwise provided for."

II. The officers of the United States demanded and exacted from the said firm of k, Post & Martin upon such importations a duty amounting to 45 per cent ad rem, and received from the said firm seventy-four thousand four hundred and nty and $\frac{10}{100}$ ($74,420.10) dollars of import duties in excess of the legal duties on steel blooms so as aforesaid imported by the said firm.

III. The steel blooms so imported as aforesaid for the individual account of the firm of Clark, Post & Martin were shipped directly to the rolling mills and were e rolled in steel rails for the account of the said firm, which were sold at current ket prices, and as the result of all the said importations made by the claimant's firm during the said years the said firm suffered a loss.

IV. At the time of paying the said 45 per cent duty said firm believed that the ect rate of duty was 30 per cent ad valorem.

V. The said importers, including the claimant herein, did not at the time of the ment of said duties make formal protest against the exaction of the said illegal of duty.

VI. The imposition of a rate of $2\frac{1}{4}$ cents per pound upon such importations would e resulted in a heavy financial loss on the said importations.

VII. After the payment of the said duty by the said firm, as aforesaid, it was held he United States Circuit Court in the Southern District of New York, in a suit ught by *Downing* v. *Robertson, Collector*, upon a verdict of the jury under instruc- is of the court, that this merchandise herein referred to as steel blooms should e been classified as "steel in a form not otherwise provided for," and dutiable at per cent ad valorem. An appeal from such decision was dismissed by the Supreme rt of the United States, and the Treasury Department by letter under date of ruary 11, 1885, directed that there should be no further litigation on the subject.

VIII. Thereupon certain importers of steel blooms presented a bill to Congress their relief, which bill conferred jurisdiction upon the Court of Claims (notwith- nding any statutory bar of limitation, and notwithstanding the requirements of statutes as to payment under protest, appeal to the Secretary of the Treasury, and ice to bring suit ordinarily in such cases, as prescribed in title 34, Collection of ties, chapters 6, 7, and 8, Revised Statutes) to hear, try, determine, and render gment as in an original suit, with the right of appeal as in other cases, the claims he said importers.

IX. The claimant's said firm was named in this act, but were misdescribed as larke, Post & Martin, Agents for the Springfield Iron Company." Congress in- ded by such act to cover the entire claim of the said firm, and it was the under- nding of the claimant that the said firm had been provided for therein, individually, well as on joint account with the Springfield Iron Co.

X. Thereafter, pursuant to the provision of said act, the claimant, as surviving tner as aforesaid, filed a claim in the Court of Claims of the United States, No. 55, asking for a refund of the said excess of 15 per cent ad valorem upon all of said portations.

XI. The claimant recovered on this claim only to the extent of the importation de on the joint account with the Springfield Iron Co. upon objection made by the orney General, acquiesced in by the then attorney for the claimant, that the act not confer jurisdiction to allow a claim of the said firm on its individual account. gment was thereupon rendered in favor of the receiver of the Springfield Iron Co. a claim filed on his own behalf, No. 23777, for $18,045.57 and in favor of the claim- herein for the sum of $6,015.18.

XII. These importation upon which the claimant has already recovered were of identical class and character of merchandise as those upon which he is now seek- a recovery, and were made under the identical circumstances as part of the same up of importations.

XIII. The claimant did not know until about April 4, 1905, when this objection s made by the Attorney General, that the entire individual claim of his said firm d not been provided for in the said act of January 9, 1903. The findings on his said im were filed in this court on April 2, 1906.

XIV. The claimant thereupon at once caused a new bill to correct this defect sing from this said misdescription to be presented to the Fifty-ninth Congress at

its first session (S. 5151). This bill was reported favorably by the Senate comm (Rept. 2538) by a report which found that Congress had omitted to provide for claim by an inadvertence, and was duly passed by the Senate on April 12, 1906. similar bill was introduced in the House and referred to the Committee on Cla which made no report.

XXV. The bill was reintroduced before the Sixtieth Congress (S. 763, H. R. 12 and referred to the Committee on Claims. A hearing was had before the subcomm of the House committee, who considered the bill favorably, but did not report. bill was introduced in the Sixty-first Congress (H. R. 16143). A hearing was had fore the subcommittee of the House committee on February 16, 1910, which wa ported and ordered printed. No report was made by the House committee. The was introduced before the Sixty-second Congress at its second session (S. 4226, H 17323) and came regularly before the Senate Committee on Claims on February 1912, and was on motion referred to this court for findings in pursuance of the provis of section 151 of the Judicial Code. Thereupon the bill was reintroduced in form t referred, and was referred, with other claims, to this court for findings on Febr 22, 1912.

XXVI. No part of the said excess duties has been paid by the United State anyone else, except so much as was recovered under said act of January 9, 1903 judgment of this court, as aforesaid, in the amount of $24,060.75, covering the en set forth in the findings, of which amount $18,045.57 was recovered on the said j account by the Springfield Iron Co. and $6,015.18 by the claimant.

XXVII. The amount of duties paid, as aforesaid, in excess of the duty warra by law, which have not been recovered from the United States Government as a said, amounts to $50,359.35.

XXVIII. On the 31st day of October, in the year 1881, the firm or copartner of Clark, Post & Martin was dissolved by voluntary dissolution, and thereupon claimant became the liquidating partner of said copartnership by oral agreen between all the members of said firm, and was and is vested with all the rights, p erty, and assets of said copartnership and the right to receive and collect the sa including the claim hereinbefore set forth.

XXIX. The failure to make protest and appeal, as required by title 34, chap 6, 7, and 8, Revised Statutes, was under circumstances amounting to duress.

XXX. The claimant is now the owner of the said claim and, except for the sta of limitations and failure to comply with the statutes relating to payment under test, appeal to the Secretary, and notice of suit as then required by law, woul entitled to a judgment of this court for the sum of $50,359.35.

XXXI. Under the terms of the act of June 30, 1864 (13 Stats., 205), the claim Henry A. V. Post, as surviving and liquidating partner of H. A. V. Post, Arche Martin, Clarence H. Clark, Frederick S. Kimball, Frederick J. Kimball, and S W. Colton, jr., who composed the late firm of Clark, Post & Martin, paid to the Un States the sum of fifty thousand three hundred and fifty-nine and $\frac{35}{100}$ do ($50,359.35) excess duties on importations described herein.

CONCLUSION.

The claim is not a legal one. It is equitable in the sense that the United St exacted of the claimant sums in excess of the legal rate of duty under the tariff and retains said sum in the Treasury.

OPINION.

Booth, J., delivered the opinion of the court:

The various contentions involved in this case make it somewhat complicated. question of jurisdiction is of course supreme, and to it the court confines its discus in this opinion. The claimant, as surviving and liquidating partner of the for firm of Clark, Post & Martin, is now here under a congressional reference in ac with section 151 of the Judicial Code. The claim is for a refund of import du illegally exacted by the Treasury Department on certain importations of steel bloo In 1879 the merchandise imported was a new article of commerce, and under the visions of the tariff act then in force a dispute arose as to its proper classificatio taxing purposes. There was room for the application of three rates of duty, viz or 45 per cent ad valorem, or a specific duty of $2\frac{1}{4}$ cents per pound. The Treas Department finally adopted the 45 per cent ad valorem rate, and the claimants p said rate without protest or objection. Subsequently in the case of *Downing* v. *ertson, Collector*, the court determined that rate illegal and brought the merchan within a classification calling for a rate of 30 per cent ad valorem, thereby hol the claimants to have paid an excessive tax of 15 per cent ad valorem. The claim

without remedy to secure a refund of any portion of said excess under any general respecting the subject because they had failed to protest or appeal as specifically ided therein. (Secs. 2931 and 3011, R. S.) To relieve this situation and grant was obviously just and equitable, the Congress on January 9, 1903 (32 Stat. L., passed a special jurisdictional act referring to this court, among many others, claim of the claimant. The claimant's firm, in the conduct of its business, had e importations of steel blooms on its own account, and other importations con- tively with the Springfield Iron Co. in conformity with a joint trade agreement that corporation. The special jurisdictional act of 1903, in specifying the claim- firm used this language: "Clarke, Post and Martin, agents for Springfield Iron pany." As a matter of fact, Clark, Post & Martin had never been the agents e Springfield Iron Co., and the importations made by said firm on its own account greatly in excess of those made in connection with the Springfield Iron Co. rding to the petitions filed. The claimant, on July 6, 1903, filed his petition in court under the special act of 1903 wherein he alleges all the importations made aid firm, both on its own account and on account of the joint-trade agreement the Springfield Iron Co.; the petition covering, in fact, the entire scope of this icular transaction, except an entry or two at the port of Philadelphia. The dings together with the claimant's first request for findings of fact conclusively that no doubt existed as to claimant's rights to recover under the special act *ll* the importations the firm had made. The defendants, on March 14, 1906, in a ten answer and brief, called claimant's attention to the fact that the major portion e excess duties paid by the claimant and the Springfield Iron Co. had been in- ed in a judgment awarded said corporation in a suit brought by it under said act, also expressly challenged the right of the claimant under the terms of the juris- ional act to recover for any excess duties paid upon importations made by the of Clark, Post & Martin on its own account. On March 15, 1906, the day follow- the interposition of this defense, the claimant, through his attorneys of record, nded his requests for findings of fact and for judgment under his petition, adopted contention of the defendants, and consented to a judgment simply for the bal- of the excess duties due said firm on the importations made by it and the Spring- Iron Co. under said joint-trade agreement, making no further effort to recover mportations made by the claimant's firm on its own account. The above facts not disputed, and out of them the claimant erects a contention for a judgment in case instead of the certification to Congress of the usual findings of fact under the ker Act. To sustain this contention claimants rely upon the proviso to section 151 e judicial code (36 Stat. L., 1135–1138), which reads as follows:

Whenever any bill, except for a pension, is pending in either House of Congress viding for the payment of a claim against the United States, legal or equitable, r a grant, gift, or bounty to any person, the House in which such bill is pending , for the investigation and determination of facts, refer the same to the Court of ms, which shall proceed with the same in accordance with such rules as it may pt and report to such House the facts in the case and the amount, where the same be liquidated, including any facts bearing upon the question whether there has n delay or laches in presenting such claim or applying for such grant, gift, or bounty, any facts bearing upon the question whether the bar of any statute of limitation ld be removed or which shall be claimed to excuse the claimant for not having rted to any established legal remedy, together with such conclusions as shall be icient to inform Congress of the nature and character of the demand, either as a m, legal or equitable, or as a gratuity against the United States, and the amount, ny, legally or equitably due from the United States to the claimant: *Provided, ever*, That if it shall appear to the satisfaction of the court upon the facts estab- ed, that under existing laws or the provisions of this chapter, the subject matter he bill is such that it has jurisdiction to render judgment or decree thereon, it l proceed to do so, giving to either party such further opportunity for hearing as ts judgment justice shall require, and it shall report its proceedings therein to the se of Congress by which the same was referred to said court."

his provision of the statute had been many times before the court, and it has been formly held to be mandatory. *Stovall* v. *United States* (26 C. Cls., 226). The ention of the law is clear; by it Congress extended under a congressional reference rum with jurisdiction to render judgment in favor of the claimant where that sdiction had been previously given under general or special acts in reference to same subject matter; in other words, if after examination of the subject matter it ears to the court that the claimant might have preferred his claim under existing and prosecuted the same to judgment irrespective of a congressional reference, shall be treated as having done so. As was said in the Stovall case *supra*, "Instead estricting its action to the functions of a jury and finding the facts in the form of

a special verdict for the action of Congress, the court is required to act judicially determine the legal rights of the parties in a final judgment."

Whatever jurisdiction the court possesses to award judgment in this case was ferred by the act of January 9, 1903. We must again recur to that statute and the petition filed herein as identical with respect to powers of adjudication as petition filed under the same. Inasmuch as the defendants rely upon a plea *adjudicata*, which is always a meritorious defense, a critical examination of the fo proceedings filed under the act of January 9, 1903, and which will be hereafter d nated as case No. 23355, is indispensable.

Under the express terms of the act of January 9, 1903, the claimant acquired a of action. The statute was remedial and manifestly intended to right an appa wrong. The claimant did not, however, acquire a right to prefer two claims. language of the statute either limited the jurisdiction of the court to the copartne claim of Clark, Post & Martin or the claim of Clark, Post & Martin, agents for Spring Iron Co. The claimant could not possibly recover in both capacities. Treating, t the words "agents for Springfield Iron Co." as *descriptio personæ* we have the m puted assertion of the claim of the copartnership of Clark, Post & Martin; as a m of fact, the allegations of the petition filed in case No. 23355 specifically set fort the importations made by said copartnership, both on its own account as well a account of the joint trade agreement with the Springfield Iron Co. That was the preferred under the special jurisdictional act of 1903 and fully prosecuted thereu until severed in response to the defense interposed by the Government as heret noted. The judgment of the court in case No. 23355 is evidently a consent judgm It shows upon its face to have been rendered in accord with the agreed findings of and covered only the amount of excess duties paid by the copartnership upon the importations made by it and the Springfield Iron Co. The record in case No. 2 is overwhelmingly convincing that the court's attention was never directed to supposed limitations of claimant's right to prosecute a claim on its own acc That issue was never presented; and if that question alone determined the pr issue, it would be one of easy solution. The claimant, however, had but one rig action under the act of January 9, 1903, and that right, as in now conceded, was a to prosecute the claim of Clark, Post & Martin, a copartnership. This cause entire. It embraced all the illegal exactions made by the Government on any an importations the firm had made, and under the statute covered the entire scope o transaction and could not be split or severed. While it is true that claims withd or withheld from the consideration of the court in a prior action, where the fo judgment is plead in bar, are not *res adjudicata*, it must likewise appear that the of action formerly considered was capable of severance and susceptible of b withdrawn. (*Black on Judgments*, vol. 2, p. 621.) The fundamental basis fo doctrine of *res adjudicata* is the idea of repose. It intervenes to prevent a multipl of lawsuits, and attaches permanent stability to the judgments rendered in a g controversy and covers every point involved in it. As before observed, unde act of January 9, 1903, Clark, Post & Martin had but one cause of action. That was submitted to the court, and upon it judgment was rendered in the name of C Post & Martin. This is particularly true in view of the fact that the copartnership never at any time the agents of the Springfield Iron Co., never asserted such a cl and in this record expressly repudiate it. Case No. 23355 having gone to judgm no motion for a new trial made, said judgment having been appropriated for accepted, that controversy is at an end. (*Cyclopedia of Law and Procedure*, vol p. 436.)

The case of *Brandon* v. *United States* (46 C. Cls., 559) is relied upon as an ground for excluding jurisdiction to hear this case. There is absolutely no simil as to the two cases. The Brandon case involved the construction of an act whic terms provided both a right and a remedy for the suitor. In the Brandon case the referred in terms a claim, but in subject matter what was not a claim. No existed prior to the passage of the captured and abandoned property act of March 1863 (12 Stat. L., 820), and the amendatory act of July 2, 1864 (13 Stat. L., 375 recover the proceeds of cotton captured and sold by the United States military autl ties during the Civil War. The property itself was liable to confiscation, and after the war the right and remedy were extended only to loyal owners. This sub is fully discussed and all the citations incident thereto set forth in the Brandon opin The act of January 9, 1903, is in nowise similar to the statute discussed in the Bra case; the former act, after making special provisions with respect to protest, sta of limitations, etc., extended to the claimants a forum where their claims migh adjudicated. It was expressly remedial and extended only to the remedy. That claim itself, in so far as it might be a just demand against the Government, was in wise affected is manifest from the most liberal exceptions as to possible defenses u

laws. The right to a claim clearly prevailed; the remedy had been lost through nission of claimants to follow the details of existing law respecting its recovery. Brandon case was limited to a discussion of a special class of cases, not claims, ting a special fund in regard to which the court was empowered to adjudicate pecial claimants. There was no other law under which these proceedings might been had, and Congress limited both the character of claimants and the time of tation of claims. Nothing seems plainer than that Congress intended, by the enth section of the Tucker Act, to refer to this court all claims which in a strict are not *legal* claims; that is, not susceptible to prosecution under positive law, just one in suit, for it expressly grants jurisdiction to the court to render judgment in es where, under a Tucker Act reference, the court finds, upon investigation, it has iction so to do under positive law, thereby doing for the pleader what he might have done by coming in under our general jurisdictional act. This authority fore discussed leaves Tucker Act references applicable only to that class of claims ut established legal remedies and as to which Congress reserves its right of final ent. The court, in considering the Brandon case, had no thought of its appli- to cases of this character, for in the opinion the court said: "Congress, by the 1863, limited the rights of loyal owners thereunder in the Court of Claims and, e act of 1868, declared that the remedy therein given in said court should be sive of all others; so that claims for the proceeds of captured property, under ct of 1863 and by reason thereof, stand on a different basis even from those origi- g as acts of war." In this case Congress was not, by the act of January 9, 1903, ng with a special fund collected during hostilities and long retained by the rnment under its war power, and as to which the courts of the land had said it both a legal and equitable right. The situation is the reverse; Congress was grant- elief to a class of claimants from whom it had made monetary exactions under prehension of its authority so to do. The Government had in its possession s of this claimant which, under judicial decision, did not properly belong to it, which the claimant was unable to retake because of certain technical omissions to its right to prosecute its claim. The remedy had been lost, the claim remained, as the subject-matter of the bill fully covers this claim, it is sufficient to refer the court.

e findings will be certified to Congress, together with a copy of this opinion. so ordered.

DWRY, Judge:

y reason for concurring in the conclusion rests on the broad ground that there was xaction of excessive duties as an ad valorem tax on the steel blooms, and this ss over and above the legal rate went into the public Treasury and *in foro conci-* belongs to the firm making the payment.

it there was no duress, and because of that my assent is withheld from the findings. reasons which may hereafter appear I am unable to concur in some of the reasons gned by the majority of the court for the conclusion.

BY THE COURT.

led December 1, 1913.

true copy.

est this 7th day of February, 1914.

EAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.